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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re H.R., a Person Coming
Under the Juvenile Court Law.

B288691
(Los Angeles County
Super. Ct. No. 17CCJP00891A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ORLANDO R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Pete R. Navarro, Commissioner. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles,
Assistant County Counsel, David Michael Miller, Deputy County
Counsel, for Plaintiff and Respondent.

Orlando R. (father) appeals from the order of the juvenile court taking jurisdiction over his infant daughter H.R. (Welf. & Inst. Code, § 300, subd. (b)(1).)¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

When H.R. was five months old, the Department of Children and Family Services (the Department) filed a petition alleging in relevant part that mother² and father “have a history of engaging in violent physical and verbal altercations in the child’s presence. On 9/29/17 the mother struck the father’s face, chest and arms with the mother’s hands, while the mother held the child. . . . On 9/29/17 the mother grabbed the father’s cell phone and the father attempted to retrieve the cell phone from the mother and threw the mother to the ground. Such violent conduct between the parents in the child’s presence endangers the child’s physical health and safety, placing the child at risk of suffering serious physical harm, damage and danger.”

Viewing the evidence according to the usual rules,³ father has a long history of convictions for drug-related offenses and is a

¹ All further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

³ On appeal, we apply the substantial evidence test to the juvenile court’s jurisdictional factual findings. We resolve all conflicts, and indulge all reasonable inferences, in the evidence in favor of the court’s findings. We uphold a judgment supported by

registered controlled-substance offender. At the time of the incident described in the petition, he was on parole after serving time for his conviction of selling narcotics and possessing firearms. On September 29, 2017, mother confirmed her suspicion that father had resumed selling drugs by reviewing messages on his cell phone, and threatened to notify his parole officer. Father became upset and the two struggled for the phone. Mother told the social worker and the police that when father tried to retrieve the phone from her, he pulled her hair and “yanked [her] down,” pinning her down on her knee and hurting her. He grabbed her wrists, leaving bruises. She scratched his neck when she grabbed his necklace. She then left baby H.R. unattended while she chased father out into the street.

Mother contacted the police and, on their advice, applied for a restraining order against father on October 2, 2017. Two days later, the police arrested mother for inflicting corporal injury on a spouse/cohabitant, but the charges were later dropped. When she was arrested, mother told the police officer that there had been domestic violence between her and father in the past that was not reported. For instance, when she was pregnant with H.R., father grabbed her by the hair and pinned her to the floor in a manner similar to the September 29 incident. The two also argue in front of the baby.

Father admitted that he and mother had been in a violent relationship for about a month and a half. He denied mother’s allegations and stated he never physically assaulted her.

substantial evidence, even if evidence to the contrary exists and the court might have reached a different result had it believed other evidence. (*In re Madison S.* (2017) 15 Cal.App.5th 308, 318.)

However, when asked what information in the Department's detention report was not factual, father only denied stating that mother took his cell phone and searched through it, or that the two struggled over the phone.

The Department detained H.R. and, because the parents had restraining orders against each other, placed the baby with the maternal grandmother.

The juvenile court sustained the petition (§ 300, subd. (b)(1)) and removed the baby from her parents' custody (§ 361, subd. (c)). Father appeals.

DISCUSSION

Relying on *In re Rocco M.* (1991) 1 Cal.App.4th 814, father contends there is no evidence to support the jurisdiction findings against him because the September 29, 2017 altercation was the only event that occurred in the baby's presence.

In re Rocco M., *supra*, 1 Cal.App.4th at page 824 held that former section 300, subdivision (b) required evidence that at the time of the hearing the child is subject to the defined risk of harm, with the result that "past infliction of physical harm . . . standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.' "

Former subdivision (b) of section 300 has been amended since *In re Rocco M.* The statute now authorizes dependency jurisdiction when "[t]he child *has suffered*, or there is a substantial risk that the child *will suffer*, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child." (§ 300, subd. (b)(1), *italics added*.) "[T]he use of the disjunctive 'or' demonstrates that a showing of prior abuse and harm is

sufficient, standing alone, to establish dependency jurisdiction under these subdivisions.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1435, fn. omitted.)⁴

Here, the evidence was more than sufficient to support the juvenile court’s domestic violence finding. *Both* parents engaged in the physical fight on September 29, 2017. Although father tells a different story about what started that fight, and although the parents gave conflicting statements about what occurred and who the aggressor was, we do not reweigh the evidence or assess credibility. (*In re Madison S.*, *supra*, 15 Cal.App.5th at p. 328, fn. 14.) Mother, whose testimony is sufficient to support the court’s findings (*id.* at p. 318), repeatedly stated that father pulled her to the ground by the hair and that the two fought. The baby was present during the violence on September 29, and as father admitted, she was scared and cried. “[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

Nor was the September 29, 2017 incident a one-time event. The parents both admitted they have a history of domestic violence that predates H.R.’s birth; father stated that they had

⁴ *In re J.N.* (2010) 181 Cal.App.4th 1010 disagreed with *In re J.K.*, *supra*, 174 Cal.App.4th 1426 to the extent the latter case concluded that subdivision (b) of section 300 authorized dependency jurisdiction based on a single incident resulting in harm, absent current risk. (*In re J.N.*, at p. 1023.) *In re J.N.* is not relevant here where the record contains evidence of more than a single incident.

been in a violent relationship for about a month and a half; and they have restraining orders against each other. Moreover, mother told the police that father grabbed her by the hair and pinned her to the floor *when she was pregnant with H.R.* The juvenile court could reasonably infer that these parents have an entrenched violent relationship and that the September 29 fight was simply the only violent event in H.R.'s presence that was reported to the police.

Father argues there is no continued risk of serious harm to the baby because since the September 29 incident he has been cooperative, has complied with his parole conditions, and has enrolled in parenting and anger management classes, and counseling. Father should be commended for his cooperation and for participating in classes and counseling. But, the social workers and their supervisors all agreed on the eve of the jurisdiction hearing that, despite his participation in domestic violence programs, father had not yet taken responsibility for the very issues that brought him to the Department's and the court's attention. He persisted in blaming mother instead of focusing on the risk to the baby from domestic violence. According to his own therapist, father was processing the effect *only* of "being a *victim* of intimate partner violence which resulted in the removal of father's child." (Italics added.) Making matters worse, according to the Department, the parents continued to have a conflicting and hostile relationship towards one another and so the domestic violence issues are unresolved. For these reasons, the juvenile court reasonably concluded there remained a risk to H.R. such that supervision was needed to help mitigate that risk. (See *In re M.R.* (2017) 8 Cal.App.5th 101, 110.)

Given our conclusion here, we need not assess whether the juvenile court also should have sustained the petition's allegations of father's drug abuse. " 'As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate.' " (*In re J.L.* (2014) 226 Cal.App.4th 1429, 1435.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.